

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEFORGE MARITIME TOWING, LLC, a  
Washington limited liability company,

Plaintiff,

v.

HAMILTON CONSTRUCTION, LLC, an  
Alaska limited liability company,

Defendant.

***IN ADMIRALTY***

Case No.

**COMPLAINT**

COMES NOW plaintiff DeForge Maritime Towing, LLC, (hereinafter “DeForge” or “plaintiff”), by and through counsel of record, Michael A. Barcott of Holmes Weddle & Barcott, and alleges the following as their causes of action against Defendant Hamilton Construction, LLC as follows:

**I. PARTIES**

1. DeForge Maritime Towing, LLC is a Washington limited liability company doing business in the Western District of Washington.

2. Hamilton Construction, LLC is an Alaska company which chartered the Barge THELMA 302 O.N. 569658 for cargo movement from Fairhaven, Washington to Port MacKenzie, Alaska.

1. **II. JURISDICTION**

2. 3. This matter involves the breach of a Bareboat Charter Agreement by  
3. Hamilton and is an admiralty and maritime claim within the meaning of Rule 9(h), Fed.  
4. R. Civ. P. Jurisdiction is invoked pursuant to 28 U.S.C. §1333.

5. **III. VENUE**

6. 4. The Bareboat Charter Agreement involved herein is attached as Exhibit A  
7. to this complaint. Pursuant to paragraph 17.7 of that agreement the parties selected the  
8. United States District Court for the Western District of Washington as the appropriate  
9. venue for this action. In addition to the provisions of paragraph 17.7 venue is otherwise  
10. appropriate in this Court.

11. **IV. FACTS**

12. 5. On August 23, 2022 plaintiff DeForge chartered to defendant Hamilton  
13. the barge, THELMA 302, O.N. 569658.

14. 6. An On Hire Survey was performed by Alexander Gow, Inc. delineating  
15. any and all damages or defects to the barge prior to the charter.

16. 7. On January 3<sup>rd</sup> and February 9<sup>th</sup> 2023 an Off Hire Survey was performed  
17. by Alexander Gow, Inc. delineating damages found at the conclusion of the charter  
18. period.

19. 8. The bareboat charter has two provisions particularly relevant to this  
20. dispute. The first is contained in paragraph 1.4 and provides, in part, “under no  
21. circumstances shall the vessel be grounded or allowed to touch bottom.” The second at  
22. paragraph 5.1, provides that:

23. The vessel shall be redelivered to owner with OWNER afloat and moored  
24. in OWNERS present berth in Tacoma Washington in the same good order  
25. and condition, ordinary wear and tear excepted, as when delivered to and  
26. accepted by CHARTERER. CHARTERER shall be solely responsible for  
any costs to restore the vessel to its same condition, ordinary wear and tear

1. excepted, as at the time of delivery to CHARTERER and the vessel shall  
2. remain on hire until such work is accomplished.

3. As demonstrated by the on hire survey and the off hire survey the vessel did incur  
4. damages beyond ordinary wear and tear. The estimate to repair those damages is  
5. \$470,804.09.

6. 9. On information and belief it is alleged that the vessel grounded near Fort  
7. MacKenzie, Alaska on or about October 6, 2022 and the damages occurred at that time.

8. 10. Alternatively, whether the vessel grounded or not, and irrespective of the  
9. date any damages occurred, the vessel was not returned to DeForge in the same condition  
10. as she was chartered, wear and tear excepted.

11. 11. The bareboat charter at paragraph 5.1 provides that the vessel shall remain  
12. on hire until repair work required by the charterer is accomplished. To date that repair  
13. work has not been accomplished, or even attempted, and thus the vessel remains on  
14. charter.

15. 12. DeForge was able to find an alternative use for the vessel and retook her  
16. pursuant to the terms of the charter agreement on April 1, 2023. The unpaid charter hire  
17. through March 31, 2023 is \$241,800. In addition the cost of retaking the THELMA 302  
18. was \$92,866.

19. 13. Pursuant to the terms of the charter DeForge is entitled to a late fee  
20. (Charter Agreement paragraph 17.3), taxes (Charter Agreement paragraph 12), and legal  
21. fees (Charter Agreement paragraph 17.7).

22. 14. Pursuant to paragraph 9.1 of the Bareboat Charter Hamilton agreed to  
23. procure and maintain, at its sole cost and expense, during the entire period of this  
24. agreement, certain insurances. *See* Article 9. Those insurances included Hull and  
25. Machinery Insurance in an amount not less than \$2,500,000, Protection and Indemnity  
26.

Insurance with a minimum limit of \$10,000,000 and charterer's legal liability insurance in an amount not less than \$10,000,000 with broad form contractual liability coverage. In addition DeForge was to be named as an additional insured on all such insurances.

16. On information and belief it is alleged that Hamilton did not maintain these insurances during the full term of the Charter Agreement.

#### **V. FIRST CLAIM FOR RELIEF**

Plaintiff realleges and reincorporates as though fully set forth herein the allegations of paragraphs 1 through 16 above.

17. For physical damage to the barge THELMA 302 DeForge claims \$470,804.09.

#### **VI. SECOND CLAIM FOR RELIEF**

Plaintiff realleges and reincorporates as though fully set forth herein the allegations of paragraphs 1 through 17 above.

18. For unpaid charter hire plaintiff claims \$241,800.

#### **VII. THIRD CLAIM FOR RELIEF**

Plaintiff realleges and reincorporates as though fully set forth herein the allegations of paragraphs 1 through 18 above.

19. For expenses attendant to retaking the THELMA 302 prior to the completion of the repairs plaintiff claims \$92,866.

#### **VIII. FOURTH CLAIM FOR RELIEF**

Plaintiff realleges and reincorporates as though fully set forth herein the allegations of paragraphs 1 through 19 above.

20. By failing to procure the insurances required, and failing to name DeForge as an additional insured on such policies Hamilton has breached its contract with DeForge.

WHEREFORE plaintiff prays for the following relief:

1. Damages for physical damage to the barge, unpaid charter hire, and expenses attendant to retaking the barge;
2. Late fees, taxes, and legal fees according to proof in this matter;
3. Prejudgment interest as allowed by law; and
4. For such further relief as this Court deems just and appropriate.

Respectfully submitted.

DATED this 2<sup>nd</sup> day of June, 2023.

HOLMES WEDDLE & BARCOTT, P.C.

/s/ Michael A. Barcott

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